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REME COURT, U. S.

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IN THE

Supreme Court of the United States

October Term, 1969

No. 944

ROBERT CARTER, ET AL.,
Petitioners,

versus

WEST FELICIANA PARISH SCHOOL BOARD,
Respondent.

SHARON LYNNE GEORGE, ET AL.,
Petitioners,

versus

C. WALTER DAVIS, President, East Feliciana Parish School Board,
Respondent.

IRMA J. SMITH, ET AL.,
Petitioners,

versus

CONCORDIA PARISH SCHOOL BOARD,
UNITED STATES OF AMERICA,
Respondents.

RESPONSE OF CONCORDIA PARISH SCHOOL BOARD

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RESPONSE OF CONCORDIA PARISH SCHOOL BOARD

INTRODUCTION

This response to the petition for writ of certiorari is made pursuant to directions of this Court in paragraph 4[1] of its per curiam order decided on December 13, 1969.[2]

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

I.

The plaintiffs' phrasing of the question presented[3] contains one fundamental error and two omissions.

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[1] "(4) The respondents are directed to file any response to the petition herein on or before January 2, 1970."

[2] Concordia Parish School Board was not aware of any action taken or proposed in this Court until certain press releases indicated that relief was being sought therein. A telegram was sent to Justice Black requesting that no action be taken until the School Board was informed of the nature of the relief being sought and that it be given an opportunity to respond. This telegram was ignored. A telephone call from the Clerk of this Court informed the writer of the issuance of this order, a copy of which was received in the mail on 17 December. The following day, on 18 December, a copy of the plaintiffs' pleadings was received. The writer is charged by Louisiana law, in addition to his other duties, to act as counsel for the School Board (La. Revised Statutes of 1950, Title 16, Section 2). Under the circumstances here, the time limitation set out is inadequate.

[3] "In light of the decision of this Court in *Alexander* v. *Holmes County Board of Education*, (U.S. , 90 S. Ct. 29 (October 28, 1969) (hereinafter *Alexander*) did the court of appeals err in authorizing segregated student enrollment in these cases until September, 1970, where there are of record unitary desegregation plans, developed by the Office of Education of the Department of Health, Education and Welfare?" (Page 4 of plaintiffs' petition for writ of certiorari).

The fundamental error contained in the statement of the question presented is to the effect that the Court of Appeal authorized segregated student enrollment in this case until September 1970. This statement is erroneous, since the Concordia Parish school system is desegregated. In Concordia Parish *every* white child attends classes with a substantial number of Negroes. In Concordia Parish virtually every white child is also subjected to instruction from Negro teachers. Virtually every Negro child is subjected to teaching from white teachers.[4]

It is also true that there are four temporary schools which have all-Negro student bodies, but which have substantial faculty integration. These schools are temporarily all-Negro as to student bodies solely because this has been their choice. Any or all of these students were free to choose other schools. They have not been forced to attend these schools, and in September of 1970 will not be allowed to do so.

It is apparently the temporary existence of these four schools which produces the statement concerning continued segregated student enrollment.

The thrust of plaintiffs' argument, and this Court's grant of the relief sought by plaintiffs in its order of December 13, 1969, as well as the application of *Alexander v. Holmes County Board of Education*[5] to this

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[4]See Appendix A, Report to the Court of Concordia Parish School Board covering the present enrollment and faculty statistics on a racial basis.

[5]396 U.S. 19 (1969).

case, indicate that the Court of Appeal was somehow delaying desegregation.

We maintain that the Concordia Parish school system is desegregated now. If statistics are any criteria in these matters, the Concordia Parish system, on the basis of its present enrollment, compares most favorably with the systems of many other places throughout the United States, most of which are not considered segregated.[6] We are adjured to provide "just schools",[7] but when we look to other areas of the country for guidance in setting up "just schools", we are advised that "just schools" are one thing in some areas and another here.

The Concordia Parish school system has been desegregated to some extent since 1965 when it obeyed the original order issued by the District Court in this case. It again obeyed the District Court's orders modified to meet the requirements of the *Jefferson*[8] type freedom of choice plans. It obeyed and met the requirements of the Fifth Circuit Court of Appeals in its decree in the instant case, and will, of course, attempt to obey any order which subsequently issues forth from this Court.

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[6] Appendix B, Department of Justice's letter and attached memoranda to United States Court of Appeals, Fifth Circuit.

[7] "The Board must be required to formulate a new plan and, in light of other courses which appear open to the Board, such as zoning, if adequate steps which *promise realistically* to convert promptly to a system without a 'white' school and a 'Negro' school, but just schools." *Green v. School Board of New Kent County*, 391 US 430, 20 L.Ed.2d 716, 88 S.Ct. 1689 (), (emphasis supplied).

[8] *United States, et al v. Jefferson County Board of Education*, 372 Fed. 2d 836 (5th Cir., 1966), aff. 380 Fed. 2d 385 (5th Cir., 1967, cert. den. 389 U.S. 840 (1967).

However, we are now told that desegregation is not the goal which is to be realized, but we must now acquire a unitary system,[9] a term which no one seems willing to define.

This brings us next to the omissions in the plaintiffs' definition of the question presented to the Court, the first of which is a reference to the unitary desegregation plans of H. E. W. in the record. The record also indicates that the plans with respect to the Concordia Parish system, which are of record,[10] were adopted by H. E. W. officials hastily and contained many errors. In fact, there are alternate plans proposed by H. E. W., and even at this date representatives of H. E. W. are meeting with the School Board to work out a plan for presentation to the Court of Appeal on 6 January 1970, pursuant to its mandate. Accordingly, plaintiffs have omitted stating that these plans are imperfect and incomplete, as admitted by their authors.

Secondly, and most importantly, H. E. W. took no

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[9]During the en banc hearing before the Fifth Circuit Court of Appeals in Houston, Texas, on November 17 and 18, 1969, none of the parties nor the Court seemed to be able to shed any light on the subject. When pressed by counsel for the School Board for some enlightenment, members of the Court and counsel for the plaintiffs, on several occasions, remarked that while they were not able to advise what a unitary system is, they could respond as to what it was not. Suffice it to say that this answer provides very little comfort to a harassed school board seeking to fulfill its duty in obeying the law which constantly changes each time it is brought into court. Lack of understanding by the general public is even more profound.

[10]The record also contains a plan proposed by the plaintiffs themselves which varies materially from the H. E. W. plans, and, of course, also contains the plans proposed by the School Board.

position on *when* these plans *could* or *should* be fully implemented. The fact that they made so many errors themselves indicates that there are many details concerning the plans which need to be worked out. This illustrates what appears to us to be the true question presented to this Court, being whether the law as pronounced by this Court in *Green*,[11] and which formed the guiding principle in preparing the plan submitted and modified by the Fifth Circuit, remains the law. In *Green*, this Court said, with respect to desegregation plans:

> "to take whatever steps might be necessary to convert to a unitary system . . . and . . . to come forward with a plan that promises realistically to work, and promises realistically to work *now*." (original emphasis).
>
> "The Board must be required to formulate a new plan and, in light of other courses which appear open to the Board, such as zoning, fashion steps which *promise realistically* to convert promptly to a system without a 'white' school and a 'Negro' school, but just schools." (emphasis supplied).

This Court used the phrase "promises realistically" three times in *Green*, which is its last formal opinion on this subject. Using the law of *Green*, the District Court thought that the School Board's original plan which contained three phases terminating in September 1971, had the best promise of working realistically. The Court of Appeals disagreed and eliminated the third phase, but did require all preparatory steps to be taken

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[11] *Green v. County School Board of New Kent County*, supra.

to fully implement the plan except for the final student transfer. As was argued by the writer before the Fifth Circuit, proof does exist of, the fact that this feature of the plan has proved to be realistic in Concordia Parish, since the Concordia Parish schools opened with a minimum of disruption, and with substantial integration, as heretofore shown.[12] This stands out in sharp contrast to the two neighboring river parishes immediately to the south of Concordia, namely, Pointe Coupee and West Baton Rouge, where an order similar to that sought by the plaintiffs here was entered by the District Court. The effect has been to produce almost totally all-Negro schools. This situation may or may not correct itself in time. Nevertheless, one is forced to wonder whether or not such a "meat ax" approach to the problem is realistic. Under the *Green* formula, the Concordia Parish plan not only promises realistically to work now, *but is realistically working now.* The School Board, the District Court, the Court of Appeals, the Justice Department, the general public by their acceptance, and H. E. W. by its failure to object, and by its failure to state that its plan should be fully and totally implemented at once, all indicate that this approach is realistic. Only the Roger Baldwin Foundation of A.C.L.U., Inc., disagrees. This Court must now take its position on this important finding of fact.[13]

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[12]See Appendix A, Report to the Court, supra.

[13]At this stage of the desegregation process, it is dangerous and impractical to put all school systems in the same category, particularly when refinements and matters of detail are to be worked out. It is impossible for this Court to do so on a fair basis, particularly without a hearing. The writer considered a motion that this matter be heard on oral argument, but has refrained from making a formal motion, although that does seem to have considerable merit.

II.

The decision of the Court below does not conflict with this Court's decision in *Alexander* v. *Holmes County Board of Education.* In *Alexander,*[14] which, like the order in this case of December 13, 1969, was a per curiam order, this Court set the stage for its order by the following recitation of the facts:

> "The question presented is one of paramount importance involving as it does the denial of fundamental rights to many thousands of school children who are presently attending Mississippi schools *under segregated conditions* contrary to the applicable decisions of this Court. *Against this background* the Court of Appeals should have denied all motions for additional time because continued operation of segregated schools under a standard of allowing *'all deliberate speed' for desegregation* is no longer constitutionally permissible under explicit holdings of this Court the obligation of every school district to terminate dual school systems at once and to operate now and hereafter only unitary schools," (emphasis supplied) . . . *"Griffin* v. *School Board,* 377 U.S. 218, 234, 1964; *Green* v. *County School Board of New Kent County,* 391 U.S. 430, 438 to 439, 442, 1968."

The Concordia Parish case is therefore clearly distinguished from *Alexander* because Concordia Parish is not operating under a segregated condition and a standard of "all deliberate speed", but to the contrary,

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[14] 396 U.S. 19 (1969).

is operating under highly integrated conditions and an accelerated standard. *Alexander* did nothing to change the pronouncement in *Green* so as to require any school board, district court, court of appeals, or any others, to adopt a plan which it considered to be unrealistic.

CONCLUSION

As heretofore stated, the Concordia Parish School Board has obeyed all mandates issued to it, and has obeyed the law of the land as it has constantly changed in this field, and will obey any future mandates or future changes in the law to the best of its ability. It will not, however, of its own volition adopt any plan relative to its system which it considers to be unrealistic. Its opinion in this respect may or may not be correct, but as the body charged with the heavy responsibility of providing public education in Concordia Parish it has the duty to make its decision and to implement it until ordered by higher authority to do otherwise.

It is therefore submitted that the application for writ of certiorari from the Court of Appeals of the Fifth Circuit be dismissed.

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SEVENTH JUDICIAL
DISTRICT OF LOUISIANA
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Vidalia, Louisiana 71373
Attorney for Concordia
Parish School Board,
Respondent.

APPENDIX A

REPORT ON FACULTY

SCHOOL	No. of Faculty Members WHITE	NEGRO	Vacancies Since 1968-69	Employed to fill WHITE	NEGRO	No. Transferred from within WHITE	NEGRO
Clayton Elementary	6	1	3	3	0	0	0
Concord High	5	26	1*	1	0	0	0
Ferriday Elementary	27	6	9	2	1	2	4
Ferriday Jr. High	16	6	6	0	1	1	4
Ferriday High	27	6	10	5	2	10	2
Monterey High	22	4	2	0	0	0	2
Ridgecrest Elementary	11	4	15**	2	0	9	4
Sevier Jr. High	5	15	8	1	2	2	3
Sevier High	6	27	6	1	2	2	1
Vidalia Elementary	26	4	10	7	0	0	3
Vidalia Jr. High	15	4	6	2	3	0	1
Vidalia High	19	3	4	2	1	0	1
E. Washington Elementary	6*	45	1*	0	1	0	0

* This Faculty was reduced because a number of the students were transferred to pre-dominantly white schools.

** This School opened September 2, 1969.

*** Includes 2 reading resource teachers who are housed on this campus. Their services are available to other schools.

CONCORDIA PARISH SCHOOL BOARD

Ben L. Green, Jr., Superintendent
Vidalia, Louisiana 71373

October 1, 1969

CLAYTON ELEMENTARY SCHOOL

First Grade	19 White	9 Negro	
Second Grade	14 White	7 Negro	
Third Grade	10 White	9 Negro	
Fourth Grade	10 White	4 Negro	
Fifth Grade	10 White	8 Negro	
Sixth Grade	11 White	7 Negro	
	74 White	44 Negro	= 118 Total

FERRIDAY ELEMENTARY SCHOOL

First Grade	126 White	17 Negro	
Second Grade	107 White	35 Negro	
Third Grade	79 White	6 Negro	
Fourth Grade	85 White	26 Negro	
Fifth Grade	95 White	15 Negro	
Sixth Grade	94 White	26 Negro	
	586 White	125 Negro	= 711 Total
Special Education	12 White Students		

FERRIDAY JUNIOR HIGH SCHOOL

Seventh Grade	187 White	27 Negro	
Eighth Grade	191 White	31 Negro	
	378 White	58 Negro	= 436 Total
Special Education	26 White Students		

FERRIDAY HIGH SCHOOL

Ninth Grade	157 White	25 Negro	
Tenth Grade	164 White	13 Negro	
Eleventh Grade	143 White	15 Negro	
Twelfth Grade	115 White	11 Negro	
	579 White	64 Negro	= 643 Total

MONTEREY HIGH SCHOOL

First Grade	28 White	5 Negro	
Second Grade	43 White	3 Negro	
Third Grade	46 White	3 Negro	
Fourth Grade	35 White	9 Negro	
Fifth Grade	42 White	4 Negro	
Sixth Grade	32 White	3 Negro	
Seventh Grade	28 White	5 Negro	
Eighth Grade	30 White	6 Negro	
Ninth Grade	32 White	6 Negro	
Tenth Grade	21 White	9 Negro	
Eleventh Grade	26 White	3 Negro	
Twelfth Grade	26 White	4 Negro	
	388 White	60 Negro	= 448 Total
Special Education	5 White Students		

VIDALIA ELEMENTARY SCHOOL

First Grade	127 White	16 Negro	
Second Grade	121 White	11 Negro	
Third Grade	119 White	19 Negro	
Fourth Grade	121 White	17 Negro	
Fifth Grade	107 White	14 Negro	
	595 White	77 Negro	= 672 Total

VIDALIA JUNIOR HIGH SCHOOL

Sixth Grade	118 White	23 Negro	
Seventh Grade	117 White	16 Negro	
Eighth Grade	120 White	13 Negro	
	355 White	52 Negro	= 407 Total

VIDALIA HIGH SCHOOL

Ninth Grade	116 White	8 Negro	
Tenth Grade	72 White	10 Negro	
Eleventh Grade	92 White	9 Negro	
Twelfth Grade	55 White	7 Negro	
	335 White	34 Negro	= 369 Total

RIDGECREST ELEMENTARY SCHOOL

First Grade	48 White	9 Negro
Second Grade	53 White	9 Negro
Third Grade	49 White	9 Negro
Fourth Grade	59 White	12 Negro
Fifth Grade	55 White	4 Negro
Sixth Grade	50 White	8 Negro
	314 White	51 Negro = 365 Total

CONCORD HIGH SCHOOL

First Grade	0 White	40 Negro
Second Grade	0 White	44 Negro
Third Grade	0 White	26 Negro
Fourth Grade	0 White	46 Negro
Fifth Grade	0 White	49 Negro
Sixth Grade	0 White	36 Negro
Seventh Grade	0 White	53 Negro
Eighth Grade	0 White	31 Negro
Ninth Grade	0 White	46 Negro
Tenth Grade	0 White	37 Negro
Eleventh Grade	0 White	32 Negro
Twelfth Grade	0 White	32 Negro
	0 White	487 Negro = 487 Total
Special Education	15 Negro	

E. WASHINGTON ELEMENTARY SCHOOL

First Grade	0 White	148 Negro
Second Grade	0 White	178 Negro
Third Grade	0 White	174 Negro
Fourth Grade	0 White	210 Negro
Fifth Grade	0 White	170 Negro
Sixth Grade	0 White	149 Negro
	0 White	1029 Negro = 1049 Total
Special Education	20 Negro	

SEVIER JR. HIGH SCHOOL

Seventh Grade	0 White	183 Negro
Eighth Grade	0 White	157 Negro
Special Education		14 Negro
		354 Negro = 354 Total

SEVIER HIGH SCHOOL

Ninth Grade	0 White	173 Negro	
Tenth Grade	0 White	173 Negro	
Eleventh Grade	0 White	111 Negro	
Twelfth Grade	0 White	96 Negro	
	0 White	553 Negro	= 553 Total

APPENDIX B

Assistant Attorney General

DEPARTMENT OF JUSTICE
Washington

Nov. 25, 1969

Honorable Edward W. Wadsworth
Clerk, United States Court of
Appeals for the Fifth Circuit
400 Royal Street — Room 408
New Orleans, Louisiana 70139

Re: Nos. 26285, 27863, 27983, 28045,
28261, 28340, 28342, 28349, 23450,
28361, 28407, 28408, 28049
Derek Jerome Singleton, et al. v.
Jackson Municipal School District,
et al.

Dear Mr. Wadsworth:

In response to questions from Judge Gewin at the hearings on November 17 and 18 I told the Court that

I would submit to it statistics showing the racial composition of schools in some of the larger cities in the country. Enclosed are 25 copies of a chart containing such statistics for 21 school systems. In selecting the systems I tried to provide the Court with a cross section, in terms of geography, size, and in terms of the existence or non-existence of racial isolation. I have included those systems which, if my memory serves correctly, Judge Gewin mentioned in his questions. Should the Court desire additional statistics we would be happy to attempt to provide them. The statistics furnished were obtained from records of the Department of Health, Education and Welfare.

cc: To Counsel of Record

At the argument I suggested that we might also submit to the Court some examples of cities which have taken affirmative steps to help overcome *de facto* segregation in their schools. Upon examination I discovered that some discussions of such systems have been published and I would therefore call the Court's attention to Chapter 4 of the Civil Rights Commission report entitled "Racial Isolation in the Public Schools" and to Volume II, Number 1 of the Law and Society Review (November, 1967).

Sincerely,

DAVID L. NORMAN
Deputy Assistant Attorney General
Civil Rights Division

1968-69 Statistics taken from HEW Table C Series

School System / # of Schools	# of Schools All Negro	# of Schools 90-99.9% N	# of Schools 50-89.9% N	# of Schools 11-49.9% N	# of Schools 0.1-10.9% N	# of Schools All White	White Students	Negro Students	Other Minority Students	Total Students	White Teachers	Negro Teachers	Other Minority Teachers	Total Teachers
Atlanta / 160	64	10	10	02	14	20	43,506 38.2%	67662 61.7%		111027 100.0%	1971 A 44.6%	2479 55.4%		4471 100.0%
Crossley / 38 (Calculated 9/26 systems)	1	0	5	25	2	0	1535 46.5%	4217 NA 7%	1352 10.4%	14204 100.0%	662 37.8%	115 15.4%	52 6.8%	774 100.0%
Birmingham / 102	44	3	3	14	23	15	33078 48.6%	34156 51.4%		66434 100.0%	1213 50 - %	1189 49.5%		2402 100.0%
Boston / 196	1	23	36	45	60	31	64508 67.9%	25482 27.1%		94174 100.0%	3237 94.7%	200 5.1%		3907 100.0%
Brooklyn / 853	6	44	142	442	198	21	401365 43.9%	334511 31.5%	261581 24.6%	1037457 100.0%	47106 90.5%	4029 7.9%	671 1.1%	51758 100.0%
Chicago / 610	98	134	50	54	142	132	210431 27.7%	380206 50.0%	170130 22.4%	760767 100.0%	12301 45.5%	14734 54.5%	135 1.0%	27169 100.0%
Cleveland / 180	107	55	14	16	49	56	66604 40.5%	83041 50.5%		164524 100.0%	3303 80.8%	778 19.2%		4081 100.0%
Denver / 110	—	5	7	14	34	16	62.4%	9609	1550	100.0%	1370	203	47	1620
Detroit / 301	15	107	49	55	26	18	21.9%	13236		100.0%	4407 61.2%	2801 38.8%		7208 100.0%
Houston / 225	31	23	11	23	81	49	23.9%	24.5%	51.6%	100.0%	4027	1930	280	6237
Los Angeles CA / 99 (Partial)	7	20	10	19	23	19	23.2%	26.1%		100.0%	2.1%	898		45.9 100.0%
Los Angeles / 591	3	72	37	61	265	93	22.7%	22.0%		100.0%	1800	2005	6.0%	3805 100.0%
Miami / 205	22	21	6	27	100	27	23.8%	22.0%		100.0%	1.5%	98.5%	5.5%	100.0%
Milwaukee / 147	4	17	13	13	11	89	25.0%	3.0%		100.0%	97.0%			100.0%
Minneapolis / 98	0	0	3	20	26	49	24.0%	8.2%		100.0%	100.0%			100.0%
New Orleans / 130	44	21	19	30	12	8	21.5%	67.1%		100.0%	97.1%			100.0%
Philadelphia / 185	3	18	3	20	33	46	59.72 78.1%	2.211 21.9%		100.0%	2.3%	97.7%		100.0%
Pittsburgh / 198	6	87	45	68	43	9	11.2%	5.2%	3.2%	100.0%	93.1%	6.9%		100.0%
St. Louis / 181	58	36	17	20	24	26	68.2%	31.8%		100.0%	63.1%	36.9%		100.0%
San Francisco / 93 (Partial)	0	1	0	15	43	22	22.2%	3.2%	74.6%	100.0%	3.7%	1.3%	95.0%	100.0%
Washington DC / 121	0	4	11	4	3									

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of January, 1970, copies of this response were mailed to Mr. George M. Strickler, Jr., 606 Common Street, Suite 304, New Orleans, Louisiana 70130, Attorney for Petitioners, and to Mr. Jesse H. Queen, Attorney, Department of Justice, Civil Rights Division, Washington, D. C.

Vidalia, Louisiana, this ____ day of January, 1970.

W. C. FALKENHEINER